IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

LETTERS PATENT APPEAL NO. 247 OF 2002

Sanjay Krishna Gaikwad,
Residing at post Vita-
(Shivaji Nagar), Tal Khanapur,
District Sangli ..Appellant.

V/s.

1. The Secretary,
   Bharti Vuidyapeeth Pune,
   Lal Bahadur Shastri Marg,
   Pune 411 030.

2. The Principal
   Bharati Vidyapeeth Kanya
   Mahavidyalaya, at post
   Kadegaon, Tal Khanapur
   District Sangli.

3. The Registrar,
   Shivaji University,
   Kolhapur.

4. The State of Maharashtra
   (through Government Pleader
   High Court, Appellate Side, ..Respondents.
   Bombay. (Respondent Nos. 1 to 3 being original Respondents.)

Shri Prafulla B. Shah for the appellant.
None for the respondents.

CORAM : R.M.S. KHANDEPARKAR &
ANOOP V.MOHTA, JJ.

DATE : 17TH JUNE, 2005.

ORAL JUDGMENT (PER R.M.S. KHANDEPARKAR, J.)

. Heard. Perused the record. The appellant

challenges the order passed by the learned Single Judge on 24th June, 2002, in Writ Petition No. 3328 of 2002, dismissing the writ petition. The said writ petition was filed by the appellant against the order passed by the University Tribunal on 28th February, 2002, in appeal No. 56 of 1996. By the said order the appeal fild by the appellant against the order dated 7th August, 1996, terminating his services was sought to be challenged. However, the same was dismissed.

2. The undisputed facts in the matter are that initially the appellant was appointed temporarily for a period of one year on 25th July, 1993, as a teacher in the subject of Zoology. His appointment was periodically renewed every year till 1995-96. However, in the year 1996, as it was informed to the institution by the University that the appellant did not possess the required qualification to be a teacher in Zoology, he could not be continued as the teacher in the said subject. Admittedly, the appellant is the holder of M.Sc. degree in Marine Biology from the Karnataka University.

3. The impugned order is sought to be challenged on

two grounds. Firstly, that the Board of Studies of the Shivaji University had in fact approved that the appellant's qualification as being sufficient for the purpose of being a teacher in Zoology for B.Sc. Part I, II and III classes in Shivaji University. However, the said permission was totally ignored by the College Tribunal as well as the learned Single Judge while rejecting the claim of the appellant. Secondly, it is challenged on the ground that it is not only the appellant but even in some other similar cases the candidates having different qualification are allowed to teach the subject which were not the subjects for their post graduate course in which they are holding the degree. Considering the fact that the appellant had the experience of teaching for nearly 4 or 5 years in the subject of Zoology, his services could not have been terminated on the alleged ground.

4. As regards the first ground of challenge, it is a matter of record that when the appeal was filed before the School Tribunal, the Tribunal had shown reluctance to entertain the same and had directed the appellant to approach the authorities under the University for necessary relief. Accordingly, the appellant had

approached the Shivaji University and the Board of Studies in Zoology subject, after considering the case put forth by the appellant, and had resolved that;

> "After hearing Shri S.K. Gaikwad's say and after careful study of the Syllabus of Karnataka University in Marine Zoology of Shivaji University in Zoology at M.Sc. the Board of Studies is hereby of the opinion that Shri S.K. Gaikwad can teach Zoology at B.Sc. Part I,II & III classes in Shivaji University area Colleges".

At the outset, it is to be noted that the said resolution was passed on 15th September, 1998. The services of appellant was terminated on 7th August 1996, obviously, a resolution to the effect that the appellant can teach zoology at B.Sc. Part I,II, and III passed in September, 1998, cannot by itself result in setting aside the order of termination of services. At the same time it is also not in dispute that in terms of Section 38(h) of the Maharashtra University Act 1994, the Board of Studies is empowered to prepare the requirements in respect of teaching of the subjects at various levels in respect of the teachers and their qualifications. It is also not in dispute that as regards the teacher in Zoology subject, the qualification approved by the Board was M.Sc. in Zoology. Undisputedly, there was no

change made in the said requirement of qualification even on 15th September, 1998. In other words, as far as the qualification, which was required for being a teacher in Zoology was M.Sc. Zoology in the year 1996 as well as in 1998. Undisputedly, at the same time the Board of Studies had resolved that Shri S.K. Gaikwad, the appellant can teach Zoology at B.Sc. classes in Shivaji University. The resolution nowhere discloses the justification for such exception in case of Shri S.K. Gaikwad. It is also not in dispute that in case of change in the requirement of qualification of the teacher the Board of Studies have to follow certain procedure as stipulated under the Statutes and Ordinance issued by the Universities. It is not the case of the appellant that the said procedure laid down in the Statutes and Ordinances was followed in respect of the resolution in question. Besides, it is also seen from the records that in terms of statutory provisions once such resolution is passed by the Board of Studies in order to have enforceability to such resolution, it requires to be approved by the Academic Council and undisputedly the Academic Council had rejected the said resolution. Once the Academic Council had rejected the said resolution, it can have no legal force and cannot

be enforced. Considering the same no fault can be found either with the order of the Tribunal or the the order of learned Single Judge having passed the same ignoring the said resolution of the Board of Studies.

5. As regards the second ground of challenge no much discussion is required as it is settled law that nobody can claim any right to equality in illegality. Merely because some persons have been illegally allowed to continue in their posts inspite of the fact that they do not have required qualification, that cannot be a justification to accept the claim of the appellant to the post in question in view of the fact that the appellant does not possess the required qualification. Merely because the appellant had continued to be a teacher in the said subject in the said college for 4 to 5 years, contrary to the requirements of law and the provisions in that regard, the same cannot enure to the benefit of the appellant to justify his claim or allow him to continue to be a teacher in the said subject. It is essentially for the academicians to decide the qualifications which are required to be possessed by the teachers for imparting education in various subjects.

6. In the circumstances, therefore, we do not find any illegality committed by the learned Single Judge in dismissing the petition filed by the appellant against the order of the Tribunal. The order of the Tribunal also does not disclose any illegality and therefore, the appeal fails and is hereby dismissed with no order as to cost.

7. At this stage the learned advocate for the appellant prays for continuation of the interim stay which was granted in C.A. No. 250/2002. The interim stay grantd shall remain in force for 4 weeks.

[R.M.S. KHANDEPARKAR, J.]

[ANOOP V. MOHTA, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.250 OF 2002
IN
LETTERS PATENT APPEAL NO.247 OF 2002.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri Prafulla B. Shah for the Petitioner.

None for the respondents.

CORAM : R.M. S. KHANDEPARKAR AND
ANOOP V. MOHTA, JJ.

DATE : 17.06.2005

. In view of disposal of L.P.A. No. 247/2002, application does not survive and is disposed of accordingly.

(R.M.S.KHANDEPARKAR, J.)

(ANOOP V.MOHTA,J.]